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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 ANGELA LAKTEEN,

10 Plaintiff,

11 v.

12 CLARK COUNTY,

13 Defendant.

Case No. 2:04-CV-01152-KJD-PAL

**ORDER**

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15 Presently before the Court is Defendants' Motion for Attorney's Fees (#23). Plaintiff filed a  
16 response in opposition (#24) to which Defendant replied (#28).

17 **I. Standard and Analysis**

18 A district court may grant attorney's fees to a prevailing private party in a Title VII action  
19 pursuant to 42 U.S.C. § 2000e-5(k). See Christiansburg Garment Co. v. E.E.O.C., 434 U.S. 412,  
20 418-19 (1978). The statute itself does not list standards to be used by the court; it states only that  
21 fees may be awarded in the court's "discretion." 42 U.S.C. § 2000e-5(k). In Christiansburg, the  
22 Supreme Court outlined standards to guide the district court's discretion when deciding whether to  
23 grant attorney's fees to a prevailing defendant in a Title VII action. The Court explained the  
24 standard:

25 [A] district court may in its discretion award attorney's fees to a prevailing  
26 defendant in a Title VII case upon a finding that the plaintiff's action was frivolous,  
unreasonable, or without foundation, even though not brought in subjective bad faith.

1                   In applying these criteria, it is important that a district court resist the  
 2 understandable temptation to engage in post hoc reasoning by concluding that,  
 3 because a plaintiff did not ultimately prevail, his action must have been unreasonable  
 4 or without foundation. This kind of hindsight logic could discourage all but the most  
 5 airtight claims, for seldom can a prospective plaintiff be sure of ultimate success.

6                   Id. at 421-22. Because Congress intended to "promote the vigorous enforcement of the provisions  
 7 of Title VII," a district court must exercise caution in awarding fees to a prevailing defendant in order  
 8 to avoid discouraging legitimate suits that may not be "airtight." Id. at 422.

9                   Inquiring into the credibility of witnesses or whether the plaintiff came forward with  
 10 convincing and highly credible evidence, "invites the court to engage in the kind of post-hoc  
 11 reasoning condemned by Christiansburg." E.E.O.C. v. Bruno's Restaurant, 13 F.3d 285, 288 (9th Cir.  
 12 1993). Instead the court should look to whether the claim was frivolous, unreasonable, or without  
 13 foundation.

14                   In this case, the Court cannot find that Plaintiff's action was frivolous, unreasonable, or  
 15 without foundation. Plaintiff's transfer from Foreman's supervision to Boteilho's when she made  
 16 her initial complaints of harassment could have raised a sincere question in Plaintiff's mind as to the  
 17 motivation for her treatment under Boteilho. Thus, the Court cannot conclude that Plaintiff's claim  
 18 was frivolous, unreasonable or without foundation without engaging the in the kind of post-hoc  
 19 reasoning condemned by Christiansburg. Therefore, the Court denies Defendant's motion for  
 20 attorney's fees.

21 II. Conclusion

22                   Accordingly, IT IS HEREBY ORDERED that Defendants' Motion for Attorney's Fees (#23)  
 23 is **DENIED**.

24                   DATED this 13<sup>th</sup> day of November 2006.

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Kent J. Dawson  
 United States District Judge